

SPECIAL CIVIL APPLICATION No 6832 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements? -
  2. To be referred to the Reporter or not? - :
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? -
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? -
  5. Whether it is to be circulated to the Civil Judge? : NO  
-

-----  
KANTILAL B PATEL

Versus

NAVNITLAL D PARIKH  
-----

Appearance:

MR BN KESHWANI for Petitioner  
NOTICE SERVED for Respondent No. 1  
MRS SD TALATI, AGP for Respondent No. 3  
-----

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 31/03/2000

ORAL JUDGEMENT

Heard learned counsel for the parties.

2. Learned counsel for the petitioner submitted that the

provisions of the Bombay Primary Education Act, 1947 require the State Government to constitute one or more Tribunals in the official gazette for imposition of penalty on the teachers of recognized primary school. In the present case, the Tribunal was constituted by the order dated 23-1-1987 but it was published in the official gazette on 26-11-1987.

3. The respondent no. 2 filed Claim Application No. 30/87 on 15-7-1987. The Tribunal entertained various claim applications which were filed before 26-11-1987 for quashing the orders of removal or termination of the petitioners of those applications. In the present case, the Tribunal passed the interim order dated 15-7-1987 that the respondent no. 2 will continue in service and she will not be removed or terminated from the service. The petitioner challenged the jurisdiction and authority of the Tribunal in this petition on the ground that the Tribunal will be deemed to have been constituted only after the order published in the official gazette i.e. 26-11-1987. Hence, the Tribunal had no jurisdiction and authority to entertain those applications or to pass any orders therein. Secondly, passing of the impugned order amounts to allow the application finally at the interim stage. In the similar manner, various writ petitions were filed before this Court challenging the orders passed in the same by the Tribunal. This Court passed the judgment and common order dated 17-12-1996 passed in Spl. Civil Applications. 3022/88, 4588/88, 5677/88, 5906/88 and 6395/88 and 98/89.

4. This Court after considering legality and validity of the impugned order basing upon the rule laid down by the Apex Court in various cases came to the conclusion that the interim order should not have been passed by the Tribunal and that is liable to be quashed and set aside and those petitions were disposed of with the direction to the Tribunal to decide the claim applications filed by the respondents in those petitions expeditiously but not later than six months from the date of receipt of the certified copy of the Court's order and the question regarding jurisdiction and authority of the Tribunal was left open.

5. Learned counsel Mr. Keshwani for the petitioner requested this Court that in the manner the other petitions have been decided by this Court, this petition may also be disposed of by giving direction to the Tribunal to decide the claim Application No.30/87 of the respondent no. 2 within a period of six months from the date of receipt of the certified copy of the Court's

order.

6. I have considered the facts and circumstances of this case and perused the material on record. This Court has considered the aspect whether the interim relief which has been granted to the respondent of the aforesaid petitions should not have been granted and granting of interim relief to the respondent no. 2 shall amount to allowing the claim application at the initial stage. As the matter is one and the same, in the present case also, the interim relief has been granted by the Tribunal and in the similar manner the petitioner may be directed not to remove the respondent no. 2 from her service and continue her in service.

7. Accordingly, the interim order passed by the Tribunal in Application No. 30/87 is hereby quashed and set aside and the Tribunal is directed to decide Application No. 30/87 of the respondent no. 2 in accordance with law within a period of six months from the date of production of a certified copy of this order by either party. Rule is made absolute to the aforesaid extent, with no order as to costs. This petition stands disposed of.

-0-0-0-0-0-

/JVSatwara/